

## Required Forms Guide\* for Property Managers

\* This guide is NOT a substitute for reading the regulations and understanding all the requirements as they apply to your license! Required documents for Audits are subject to change due to law and rule revisions. Please view the “Rule Notices” posted periodically on the Board’s website ([www.realestate.mt.gov](http://www.realestate.mt.gov)), located under the “Regulations” tab.

**If you have questions, comments, or concerns:**

Please contact the Board Office at [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov) or (406) 841-2321.

### **ADMINISTRATIVE RULES AND STATUTES:**

Administrative Rules of Montana (ARM) – [www.mtrules.org/gateway/chapterhome.asp?chapter=24%2E210](http://www.mtrules.org/gateway/chapterhome.asp?chapter=24%2E210)

Montana Code Annotated (MCA) – [http://leg.mt.gov/bills/mca\\_toc/index.htm](http://leg.mt.gov/bills/mca_toc/index.htm)

### **TRUST ACCOUNT DOCUMENTATION:**

Property Managers, Brokers, and Salespersons practicing property management are required to have a trust account, designated by the words “trust account”, wherein all deposits, rent payments, or other trust funds received by the property manager on behalf of any other person shall be deposited. Property Management trust account records must be maintained and able to be presented in a manner compliant with ARM 24.210.805 and **each** trust account must have its own set of records.

**IMPORTANT NOTE:** If a licensee chooses to work with a property management company and use the company’s trust account (including, but not limited to, handling trust funds in any capacity), ***the licensee is choosing to share and take responsibility for the trust account.***

Offices or firms having more than one licensed property manager may utilize a single property management trust account. However, maintenance of the trust account is the responsibility of the all licensees who use the account. Licensees using trust accounts are responsible for all funds accepted by the licensee or the licensee’s staff – ARM 24.210.805(1) and (7).  
Brokers and salespersons, acting as property managers, are also held to the same standards under 37-51-321(1)(u), MCA and ARM 24.210.641(5)(z).

The following trust account records are required to be retained and available for auditing:

- Monthly Bank Statements – ARM 24.210.805(10)(b)
- Monthly Reconciliation Reports – ARM 24.210.805(13)
- Proofs of Deposit – ARM 24.210.805(10)(a)
- Checks (if applicable) – ARM 24.210.805(10)(c)
- General Ledger/Check Register – ARM 24.210.805(10)(d)
- Personal Funds Ledger (if applicable) – ARM 24.210.805(4)

- Owner Ledgers – ARM 24.210.805(12)
- Tenant Ledgers – ARM 24.210.805(11)

An example general ledger, personal funds ledger, and owner and tenant ledgers can be found on the Board's website ([www.realestate.mt.gov](http://www.realestate.mt.gov)), under the "Trust Acct." tab.

#### **OWNER FILES should include:**

- Signed Management Agreement – ARM 24.210.828(3)(r) and (x)
- Management Agreement Addendums (if applicable) – ARM 24.210.828(3)(r) and (x)
- Power of Attorney (POA) or other related legal form (if applicable) – ARM 24.210.828(3)(r)
- Invoices/Receipts – ARM 24.210.805(14)
- Correspondence related to expenditures in excess of agreed upon amounts – ARM 24.210.805(14)

#### **TENANT FILES should include:**

- Lease/Rental Agreement – ARM 24.210.828(3)(s)
- Lead Based Paint Disclosure (if applicable) – ARM 24.210.641(5)(y) and Section 1018 of Title X (Federal)
- Mold Disclosure (if applicable) – 70-16-703, MCA
- Condition Report – ARM 24.210.805(14)
- Notice of cleaning (if applicable) – 70-25-201, MCA
- List of damages/refund provided to tenant – ARM 24.210.828(3)(n), and 70-25-202, MCA

#### **LICENSEE'S MANAGING THEIR OWN (OR THEIR COMPANY'S OWN) PROPERTY:**

Licensees acting as property managers of the licensee's own property must have a written property management agreement with themselves as a property owner. ARM 24.210.828(3)(x) **does not** exempt licensees (acting independently or on behalf of a company) from this requirement. By not having a management agreement, with themselves as a property owner, the following violations may be referenced:

- ARM 24.210.805(8): a management agreement serves the purpose of allowing a trust account to be used in the same manner as if the licensee's owner funds belong to a third party. Without a management agreement in place, any payment made on behalf of the licensee's property from the trust account is considered personal indebtedness. Without a management agreement in place, appropriate management fees or other distributions cannot be determined.
- ARM 24.210.828(3)(t): a licensee is unable to advertise property without a signed management agreement from the owner of the property.
- ARM 24.210.828(3)(s): without a management agreement in place, a licensee fails to disclose to all customer and clients their contractual relationship.

#### **OTHER INFORMATION:**

**The Board's required documents may not be inclusive of all required documents to a property management transaction.** As a licensee, you are still required to abide by all licensing laws and rules, and state and federal requirements that may affect your property management transactions. Failure to abide by the laws and rules is considered unprofessional conduct as described in ARM 24.210.828 and may result in discipline against your license.

Additional applicable State and Federal laws and rules include, but are not limited to the following:

- Residential Tenants' Security Deposits Laws – Title 70, chapter 25, MCA

- The Residential Landlord Tenant Laws – Title 70, chapter 24, MCA
- Landlord and Tenant Residential and Commercial Laws – Title 70, chapter 26, MCA
- The Montana Residential Mobile Home Lot Rental Act – Title 70, chapter 33, MCA
- The Fair Housing Act – <https://www.justice.gov/crt/fair-housing-act-1>
- Lead-Based Paint Disclosure - <https://www.epa.gov/lead/real-estate-disclosure>
- State Human Rights Statutes – Title 49, MCA
- Americans with Disabilities Act (ADA) – [www.ada.gov](http://www.ada.gov)
- Megan’s Law Disclosure – ARM 24.210.828(3)(f) and 37-51-105, MCA
- Montana Fair Housing – [www.montanafairhousing.org](http://www.montanafairhousing.org)

### QUESTIONS & ANSWERS:

**Q.** *How long am I required to keep all of this documentation?*

**A.** Every property manager shall keep all trust account records and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than eight years from the date the property management agreement terminates – ARM 24.210.805(14).

**Q.** *What if my trust account records are kept electronically?*

**A.** Records may be maintained in any manner you choose. However, they must be maintained in a manner to permit auditing. If you use an accounting software to maintain your trust account, ensure that your software can provide the records in a format compliant with the Board’s requirements – ARM 24.210.805(15). If you are audited and unable to present the records in a manner compliant with ARM 24.210.805, this may negatively impact your audit outcome. Examples of a general ledger, personal funds ledger, and owner and tenant ledgers can be found on the Board’s website ([www.realestate.mt.gov](http://www.realestate.mt.gov)), under the “Trust Acct.” tab.

**Q.** *I’m being audited and I’m unable to provide the trust account records in a Board-compliant format. Can’t I just give the Auditor access to my accounting software and let the Auditor find the information?*

**A.** No. Accessing your software is your obligation. You are **required** to know how to use the software you choose.

**Q.** *Can I use a CD or other investment account/portfolio to hold trust funds?*

**A.** No. Please refer to the *Certificates of Deposit in Trust Accounts* position statement at [www.realestate.mt.gov](http://www.realestate.mt.gov), found under the “Board Information” section. A CD is like a long-term savings account – the bank intends and expects the money to be retained in the account for a fixed term and there is usually a penalty if the funds are accessed prematurely.

Trust funds are intended to be readily available (liquid) and held in a readily accessible account. In a CD, the funds are not readily accessible, which means *the source of funds does not change*. Combining a readily accessible trust account with a CD into a single ledger, which would allow the CD funds to be accessible, is a violation of ARM 24.210.805(1).

ARM 24.210.805(1) and (13) require **each** trust account to have its own set of ledgers and **each** trust account is required to be reconciled monthly (unless there has been no activity). If a property manager is found to be combining their accounts and required ledgers, they may be found in violation of ARM 24.210.805(1), (4), (10)(d), (10)(d)(i) to (iv), (11), (12), and (13).

**Q.** *Can I use a sweep account to hold trust funds?*

**A.** While the Board does not have an official position on sweep accounts, most licensees have not been able to meet the trust account requirements while using sweep accounts.

In sweep account scenarios, two or more bank accounts are used to hold trust funds: usually, one account has a low or zero percent interest rate and the other account has a high interest rate. The lower-rate account typically has a balance limit and when the funds go above or below the limit, funds are swept to and from the high-interest account, where the bulk of the funds are maintained. Sweep accounts are very active and the sweeping/transfer activity is *usually* automated by the bank on a daily basis.

Audits of sweep accounts have found that most licensees were not monitoring the excessive activity and instead combining the accounts into a single ledger, and treating the accounts as if they were a single account (which enabled them to forgo recording all of the transfers between the accounts). When licensees were monitoring and recording the transactions, they were not identifying whose funds (the original source of funds) were being transferred.

Similar to CD scenarios, if a property manager is found to be combining their accounts and required ledgers, they may be found in violation of ARM 24.210.805(1), (10)(d), (10)(d)(i) to (iv), (11), (12), and (13).

**Q.** *Can I use REALTOR® forms?*

**A.** You may, if you are a member of the National Association of REALTORS®, Montana Association of REALTORS®, or other Association of REALTORS®.

You may not, if you are not a member of the National Association of REALTORS®, Montana Association of REALTORS®, or other Association of REALTORS®.

➤ **37-51-321, MCA. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter: (d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member.

**Q.** *Can the Board provide templates of the required forms?*

**A.** No. Please refer to a legal counselor or other relevant source.

**Q.** *How do I know if the property I'm managing is required to have a Lead Based Paint Disclosure?*

**A.** Please see Title X, Section 1018 of the USC, regulated by EPA & HUD. You may obtain property information from the Montana State Library's Montana Cadastral Mapping Project. The Project's website address is <http://svc.mt.gov/msl/mtcadastral/>. The availability of this data is for informational purposes only and the data is presented in good faith only. Please view the website for additional disclosures and other related information.

**Q.** *I have a license, but 37-51-103 and 37-51-602, MCA, say I might be exempt from the requirement to be licensed. If I am exempt from the requirement to be licensed, why am I still required to comply with the Board's rules and statutes?*

- A.** The board cannot require someone to get a license if they fit within one of the licensing exemptions. However, if someone has a license, they are subject to the Board's rules and statutes and must conduct themselves according to those rules and statutes. If you have questions, please contact the Board office.
- Q.** *Can the Board provide legal advice about forms or other matters?*
- A.** No. You are free to ask questions and we will provide answers to the best of our abilities. We may also direct you to appropriate legal authority and encourage you to seek legal counsel.
- Q.** *Can the Board distribute and/or provide hardcopies of the Administrative Rules (ARM) and laws?*
- A.** No. Licensees are responsible for ensuring they are using the most current ARM and Statutes, which can be found online (refer to the **ADMINISTRATIVE RULES AND STATUTES** and **OTHER INFORMATION** section of this guide). If you are interested in obtaining official hardcopies of ARM and statutes, please contact the Montana Secretary of State's office and the Montana Legislative Services Division respectively.
- Q.** *I have more questions...*
- A.** **Asking questions will not trigger an audit** – audits are conducted randomly. Please feel free to contact the Board Office at [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov) or (406) 841-2321 if you have any questions, comments, and/or concerns. If you are currently being audited and have questions, please contact the Auditor at your earliest convenience as instructed in the letter you received.